

Bond/Bail

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Bond Disbursement Procedure
Surety Bond Process – SCAO Administrative Memorandum 2003-10

4.1 Overview

A. Authority and Purpose

Magistrates have the authority to fix bail and accept bond. [MCL 600.8507(2)(c)]

A person charged with a crime is entitled to release on his or her own recognizance, conditional release, or release on money bail. [MCR 6.106(A), MCL 765.6]

The primary purposes of a bond are: 1) to help ensure that the defendant appears in court at all times as directed to do so; and 2) to ensure safety to the public. There are several instances when a magistrate or judge is called upon to make a determination as to whether or not a person will be released on their own recognizance or **bail** is required, and if required, to establish an amount of bail. The posting of the bail requires the creation of a contract between the defendant, the bail poster (a third party or a surety), and the court. This contract is known as a **bond**. There are three types of bail for which a bond is required; cash bail (which includes the posting of ten percent), secured bail, or unsecured bail (personal recognizance). For some offenses courts do not require any bond at all.

1. Misdemeanor

Release on personal recognizance or cash bail must be determined for all persons charged with misdemeanors. [Michigan Constitution 1963, Art 1, § 15. MCR 6.106(A)]

2. Felony

a. Adult Defendant

Except for those persons specified in MCR 6.106(B), bail must be set for all persons charged with criminal offenses.¹ [Michigan Constitution 1963, art 1, § 15. MCR 6.106(A)]

¹See People v Daniels, 394 Mich 524 (1975) in which the court held “The statute requiring a cash or surety bond for bail of one charged with a crime alleged to have occurred while he was on bail pursuant to a personal bond (MCL 765.6a) takes precedence over the court rule requiring release on personal recognizance of one incarcerated more than six months to answer for a felony charge (GCR 1963, 789.2)”

Pursuant to MCR 6.104(E)(5), at a felony arraignment in district court, the court must determine what form of pretrial release, if any, is appropriate.

MCR 6.610(G)(2)(d) states that in a prosecution in which the defendant is charged with a felony or a misdemeanor not cognizable by the district court, the court shall inform the defendant of the right to be released on bond.

b. Juvenile Defendant

MCR 6.909 is a separate court rule dealing with bail for a juvenile who has been charged with a life offense in district court. (*See* Section 4.10 in Monograph 4 of the MJI Criminal Benchbook Series or MCL 712A.2(a)(1) for a list of the life offenses for which a juvenile may be charged.)

Except as provided in MCR 6.909(A)(2) the magistrate or court must advise the juvenile of a right to bail as provided for an adult accused. The magistrate or the court may order a juvenile released to a parent or guardian on the basis of any lawful condition, including that bail be posted. [MCR 6.909(A)(1)]

B. Role of Arresting Agency

Under the Crime Victim's Rights Act, the arresting agency is responsible for providing information to the victim of the reported crime. [MCL 780.751 et seq. and MCL 780.811 et seq.] Specifically, under MCL 780.755 and MCL 780.815, the law enforcement agency having responsibility for investigating the crime must give the victim notice of the availability of pretrial release for the defendant and other related information.

C. Role of Court Staff and Other Agencies

Bond investigation is often part of a probation officer's or other court staff person's duties or responsibilities. The investigation is conducted to provide the judge or magistrate with the information appropriate and necessary to determine the type, amount and conditions of that bond.

D. Role of Court

Each time a person appears before the court for arraignment, the magistrate or judge must determine whether bail should be required, if this decision has not previously been made. This process is outlined in Michigan Court Rule 6.106, Pretrial Release.

Substantial revision to this rule occurred in 1992, allowing the court to go beyond the mere setting of an amount of bail and type of security required to allow for setting conditions of release. In 1993 the legislature provided authority for conditions reasonably necessary for the protection of named persons to be entered into LEIN.

At the defendant's first appearance before the court, the court must order that the defendant be held in custody or released as provided in MCR 6.106. This decision is made after considering various factors, some of which are outlined in MCR 6.106(F)(1). Magistrates and judges may establish bail in any of the following instances:

- At the time of issuance of an arrest warrant
- At the time of arrest without warrant before the defendant's arraignment
- At arraignment after execution of the arrest warrant
- At the time of issuance of a bench warrant
- At the time of arrest on the bench warrant before the defendant's arraignment
- At arraignment after execution of the bench warrant

In each court the chief judge will establish court policy on the establishment of bail, and whether it shall be done in each of the instances above, or whether bail will be set only after some of these procedures have occurred. For instance, some courts may not allow bail on a felony arrest warrant before arraignment, or on a bench warrant before arraignment.

E. Types of Bail

1. Personal Recognizance

If the defendant is not ordered held in custody, the court must order the pretrial release of the defendant on personal recognizance, or on an unsecured appearance bond, subject to the conditions that the defendant will appear as required, will not leave the state without permission of the court, and will not commit any crime while released, *unless* the court determines that such release *will not reasonably ensure the appearance* of the defendant as required, or that such release *will present a danger to the public*. [MCR 6.106(C), emphasis added.]

2. Money Bail

Should the court determine that release on personal recognizance is not appropriate, if money bail is required, the court decides whether a 10% bond is appropriate but, it is the defendant's decision whether the bond will be posted by the defendant, posted in by a third party, secured by a surety approved by the court, or with the court's consent, secured by designated real property. The court cannot require a "cash bond only" in the full amount without allowing for a surety bond. [See also MCL 780.67]

MCL 765.6(2) provides that if the court fixes a bail amount and allows for the posting of a 10% deposit bond, the person accused may post bail by a surety bond in an amount equal to 1/4 of the full bail amount fixed under subsection (1) and executed by a surety approved by the court.

4.2.1 Interim Bail Provisions

A. Felony

Under MCR 6.102(D), the court has the option of specifying on the warrant the bail an accused may post to obtain release before arraignment on the warrant and, if the court deems it appropriate, include as a bail condition that the arrest of the accused occur on or before a specified date or within a specified period of time after issuance of the warrant.

If an accused has been arrested pursuant to a warrant that includes an interim bail provision, the accused must either be arraigned promptly or released pursuant to the interim bail provision. [MCR 6.102(F)]

Per MCR 6.102(F)(1)-(4), the accused may obtain release by posting bail on the warrant and by submitting a recognizance to appear (bond) before a specified court at a specified date and time, provided that:

1. the accused is arrested prior to the expiration date, if any of the bail provision;
2. the accused is arrested in the county in which the warrant was issued, or in which the accused resides or is employed, and the accused is not wanted on another charge;
3. the accused is not under the influence of liquor or controlled substance; and
4. the condition of the accused or the circumstances at the time of the arrest do not otherwise suggest a need for judicial review of the original bail specification.

The *Staff Comment* following MCR 6.102(F), states that the purpose of the language requiring that the accused be arrested in the county where the defendant resides or works, was to preclude the availability of interim bail to a person who may be avoiding arrest. In addition, the *Staff Comment* states that implicit in subrule (F) is the condition that the accused must be satisfactorily identified.

B. Misdemeanor

The Interim Bail Statute provides for the release of misdemeanor prisoners by giving bond to the arresting officer and others in certain circumstances not inconsistent with public safety. See MCL 780.581 *et seq.* Note that in felony cases interim bail is only available when the arrest was with a warrant which contains a judge's specification for interim bail.

The Interim Bail Statute applies to misdemeanor or ordinance violations which are punishable by imprisonment for not more than 1 year, or by a fine, or both. The Interim Bail Statute does not apply to Michigan Vehicle Code offenses. [MCL 780.587] Interim bail in misdemeanor cases is available in arrests with or without a warrant pursuant to MCR 6.102(D). Compare with MCL 780.581(1). See also Section 3.2.3, page 13.

Per MCL 780.581(3), there are 4 instances when a defendant arrested for a misdemeanor charge may be temporarily denied the right to post interim bail:

1. if defendant is found under the influence of intoxicating liquors, or a controlled substance, or any combination thereof.
2. if defendant is unable to establish or demonstrate his or her identity, or
3. if defendant is wanted by authorities to answer to another charge, or
4. if it is otherwise unsafe to release the defendant.

A person shall not be released until he or she can be arraigned or have interim bond set by a judge or district court magistrate if they were arrested without a warrant under MCL 764.15a or a substantially corresponding local ordinance, or if they were arrested with a warrant for a violation of 750.81 or 750.81a or a substantially corresponding local ordinance, and the person is a spouse or former spouse of the victim, has or has had a dating relationship with the victim, has had a child in common with the victim, or residents or has resided in the same household as the victim. [MCL 780.582a] “Dating relationship” means frequent intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinance fraternization between two individuals in a business or social context. [MCL 764.15a]

There must be reasonable and articulable grounds for forming the belief that one of the above conditions exist to deny defendant's statutory right to post interim bail. [People v Coburn, 140 Mich App 793, 789 (1985)]

The defendant may be held only until he or she is in proper condition to be released, or until the next session of court. If held, defendant must be placed in a holding cell or lockup, if available. [MCL 780.581(3-4)]

The minimum amount of bail can be no less than 20% of the minimum possible fine. The maximum amount of bail can be no more than the amount of the maximum possible fine. [MCL 780.581(2)]

Per MCL 780.585, a district court judge or district court magistrate may set the amount of interim bail by endorsing the amount on the warrant. The amount so endorsed need not be within the limits applicable where the interim bail is set by a police officer under MCL 780.581(2).

If a district court judge or district court magistrate has set the amount of bail, an arresting officer may not change it. [MCL 780.68]

If a magistrate releases a person under MCL 780.582a subject to protective conditions, the magistrate shall inform the person on the record, either orally or by a writing that is personally delivered to the person, of the specific conditions imposed and that if the person violates a condition of release, he or she will be subject to arrest without a warrant and may have his or her bond forfeited or revoked and new conditions of release imposed, in addition to any other penalties that may be imposed if he or she is found in contempt of court. In addition, the magistrate shall immediately direct a law enforcement agency within the jurisdiction of the court, in writing, to enter any interim conditional bond into the law enforcement information network (LEIN). [MCL 780.582a(5)]

4.2.2 Bond Investigation

A. Available Options

Michigan Court Rule 6.106(A) provides that, unless already ordered, the court should take one of the following actions at the defendant's first appearance:

1. Hold the defendant in custody.
2. Release the defendant on personal recognizance or an unsecured appearance bond.
3. Conditionally release the defendant with or without money bail.

B. Factors Considered

Information beyond the factors listed in court rule and statute cannot be used to sanction pretrial detention and is not permissible. The court rule specifically disallows any determination based on race, religion, gender, or economic status. There is a difference between the requirements of the court rule and the statute concerning information that must be placed on the record when setting bail. The MJI Benchbook Committee writing Monographs 3 & 4 of the Criminal Benchbook Series recommended combining the two mandates to alleviate potential appellate questions.

1. Court Rule Considerations

The information considered relevant in establishing a bond and bond conditions is listed in MCR 6.106(F)(1) and MCL 765.6 and includes:

- defendant's prior criminal record, including juvenile offenses;

- defendant's record of court appearance or nonappearance at court proceedings or flight to avoid prosecution;
- defendant's history of substance abuse or addiction;
- defendant's mental condition, including character and reputation for dangerousness;
- the seriousness of the offense charged, the presence or absence of threats, and the probability of conviction and likely sentence;
- defendant's employment status and history and financial history insofar as these factors relate to the ability to post money bail;
- the availability of responsible members of the community who would vouch for or monitor the defendant;
- facts indicating the defendant's ties to the community, including family ties and relationships, and length of residence; and
- any other facts bearing on the risk of nonappearance or danger to the public.

3. Statutory Considerations

Except as otherwise provided by law, a person accused of a criminal offense is entitled to bail. The amount of bail shall not be excessive and shall be uniform whether the bail bond is executed by the person for whom the bail has been set or by a surety. The court in fixing the amount of the bail shall consider and make findings on the record as to each of the following:

- seriousness of the offense charged;
- protection of the public;
- previous criminal record and the dangerousness of the person accused; and
- probability or improbability of the person accused appearing at the trial of the cause.

[MCL 765.6]

4. Record Requirements

The court rule and statutory requirements differ about what must be placed on the record when setting bail. To alleviate potential appellate questions, requirements from both the court and statute should be combined.

4.2.3 Order for Custody or Pretrial Release

As specified in MCR 6.106(B)(1), the court shall release the defendant on personal recognizance unless the court determines that he or she may not be released.

A. Considerations and Statement of Reasons for Custody Order

If the court determines that the defendant may not be released, the court must order the defendant held in custody for a period not to exceed 90 days after the date of the order, excluding delays attributable to the defense, within which trial must begin or the court must immediately schedule a hearing and set the amount of bail. In misdemeanor cases,

1. Considerations for Custody

- a. If the court finds that proof of the defendant's guilt is evident or the presumption great, the court may deny pretrial release to a defendant charged with:
 - murder or treason; or
 - committing a violent felony and at the time of the commission of the violent felony, the defendant was on probation, parole, or release pending trial for another violent felony, or during the 15 years preceding the commission of the violent felony, the defendant had been convicted of two or more violent felonies under the laws of Michigan or substantially similar laws of the United State or another state arising out of separate incident.
- b. The court may also deny pretrial release to a defendant charged with criminal sexual conduct in the first degree, armed robbery, kidnapping with the intent to extort money or other valuable thing if the court finds that proof of the defendant's guilt is evident or the presumption great, unless the court finds by clear and convincing evidence that the defendant is not likely to flee or present a danger to any other person.

2. Statement of Reasons and Order

The court must state the reasons for an order of custody on the record and on a form approved by the State Court Administrator's Office entitled "Custody Order" (Approved form MC 240). The completed form must be placed in the court file.

3. Exceptions for Juvenile Defendant

Michigan Court Rule 6.909 regulates detention of a juvenile without bail as follows:

a. Reasons for Detention

If the proof is evident or if the presumption is great that the juvenile committed the offense, the magistrate or the court may deny bail:

- to a juvenile charged with first-degree murder, second-degree murder who is likely to flee or who clearly presents a danger to others, or
- to a juvenile charged with first-degree criminal sexual conduct, or armed robbery who is likely to flee or who clearly presents a danger to others.

b. Place of Confinement

- **Juvenile Facility**

Except as provided in MCR 6.909(B)(2) and in MCR 6.907(B), the juvenile charged with a crime and not released must be placed in a juvenile facility while awaiting trial and, if necessary, sentencing, rather than being placed in a jail or similar facility designed and used to incarcerate adult prisoners.

- **Jailing of Juveniles; Restricted**

On motion of a prosecuting attorney or a superintendent of a juvenile facility where the juvenile is detained, the magistrate or court may order the juvenile confined in a jail or similar facility designed and used to incarcerate adult prisoners upon a showing that the juvenile's habits or conduct are considered a menace to other juveniles, or the juvenile may not otherwise be safely detained in a juvenile facility.

- **Family Division -Operated Facility**

The juvenile shall not be placed in an institution operated by the family division except with the consent of the family division or on order of a court as defined in these rules.

- **Separate Custody of Juvenile**

The juvenile in custody or detention must be maintained separately from the adult prisoners or adult accused as required by MCL 764.27a.

4. Custody Hearing

A court having jurisdiction of a defendant may conduct a custody hearing if the defendant is being held in custody pursuant to MCR 6.106(B) and the defendant requests a custody hearing. The purpose of the hearing is to permit the parties to litigate all of the issues relevant to challenging or supporting a custody decision pursuant to MCR 6.106(B). [MCR 6.106(G)]

At the custody hearing, the defendant is entitled to be present and to be represented by a lawyer, and the defendant and the prosecutor are entitled to present witnesses and evidence, to proffer information, and to cross-examine each other's witnesses. The rules of evidence, except those pertaining to privilege, are not applicable. Unless the court makes the findings required to enter an order under MCR 6.106(B)(1), the defendant must be ordered released under MCR 6.106(C) or (D). A verbatim record of the hearing must be made.

B. Considerations for Release

In a misdemeanor case in which the defendant has been incarcerated for a period of 28 days or more to answer for the same crime or a crime based on the same conduct or arising from the same criminal episode, the defendant must be released on personal recognizance. In computing the 28 days, the court is to exclude periods of delay in MCR 6.004(C)(1)-(6). [MCR 6.004(C)]

1. Amount of Bail

The amount of bail shall be sufficient to assure compliance with the conditions set forth in the bail bond, not oppressive, commensurate with the nature of the offense charged, considerate of the past criminal acts and conduct of the defendant, considerate of the financial ability of the accused, and uniform whether the bail bond is executed by the person for whom bail has been set or by a surety. [MCL 780.64]

If a person is charged with an offense punishable by a fine only, the amount of the bail shall not exceed double the amount of the maximum penalty. If a person has been convicted of an offense and only a fine has been imposed, the amount of the bail shall not exceed double the amount of the fine. [MCL 780.64]

If a person is arrested for an ordinance violation or a misdemeanor punishable by imprisonment for not more than 1 year or a fine, or both, and if the defendant's operator's or chauffeur's license is not expired, suspended, revoked, or canceled, then the court may require the defendant, in place of other security for defendant's appearance in court for trial or sentencing or, in addition, to release of the defendant on personal recognizance, to surrender to the court his/her operator's or chauffeur's license. The court shall issue to the defendant a receipt for the license per MCL 257.311a. [MCL 780.64]

2. Conditions of Release

The court must order the pretrial release of the defendant on personal recognizance, or on conditional release, with or without money bail. [MCR 6.106(C) - (E)] If the release is by personal recognizance it must be subject to the conditions that the defendant will appear as required, will not leave the state without permission of the court, and will not commit any crime while released. [MCR 6.106(C), (D)] The court must consider the factors outlined in subchapter 4.2.2, pages 7 and 8 in making its bail decision.

In deciding which release to use and what terms and conditions to impose, the court is to consider relevant information, including the factors listed in subchapter 4.2.2, pages 7 and 8. If the court orders the defendant released on conditions in MCR 6.106(D) that include money bail, the court must state the reasons for its decision on the record. However, the court need not make a finding on each of the enumerated factors. [MCR 6.106(F)(2)]

3. Protective Conditional Bonds - Entry into LEIN

MCL 765.6b allows a judge or magistrate to release a defendant subject to conditions reasonably necessary for the protection of 1 or more named persons. If a release is made under this section, the judge or magistrate must make a finding of the need for protective conditions and inform the defendant on the record (either orally or by a writing personally delivered to the defendant) of the specific conditions imposed and that the defendant will be subject to arrest without a warrant and may have his or her bail forfeited or revoked and new conditions of release imposed if the defendant violates a condition of release, in addition to any other penalties that may be imposed if the defendant is found in contempt.

The order must contain all of the following:

- the defendant's full name
- the defendant's height, weight, race, sex, date of birth, hair color, eye color, and any other identifying information the judge or magistrate considers appropriate
- the date the conditions become effective
- the date on which the order expires
- the conditions imposed

SCAO form MC-240 has a specific page designed for including all the information required by this statute. A copy of this form must be immediately forwarded to a law enforcement agency within the jurisdiction of the court for entry into the Law Enforcement Information Network (LEIN). Orders should be canceled with LEIN when a conditional bond is revoked, or when the case is closed.

4. Release of Juvenile Defendant

The magistrate or the court may order a juvenile released to a parent or guardian on the basis of any lawful condition, including that bail be posted.

5. Pretrial Release Order

Conditions can be placed on any type of bond in an effort to assure the defendant's appearance. The nature of the allowable conditions that can be placed on a bond also suggest that objectives concerning the safety of victims or the community in general can be considered.

a. Personal Recognizance

The conditions of a personal recognizance bond are specified in MCR 6.106(C). and state that the defendant:

- 1) will appear as required,
- 2) will not leave the state without permission of the court, and
- 3) will not commit any crime while released.

b. Conditional Release

If the court determines that a release on personal recognizance will not reasonably ensure the appearance of the defendant as required and the safety of the public, the court may order pretrial release on the any of the following conditions or combination of conditions that the court determines appropriate according to MCR 6.106(D). [See also MCL 780.69] The conditions include:

- 1) that the defendant will appear as required, will not leave the state without permission of the court, and will not commit any crime while released, and
- 2) subject to any condition or conditions the court determines are reasonably necessary to ensure the appearance of the defendant as required and the safety of the public, which may include requiring the defendant to:
 - make reports to a court agency as are specified by the court or the agency;
 - not use alcohol nor illicitly use any controlled substance;

- participate in a substance abuse testing or monitoring program;
- participate in a specified treatment program for any physical or mental condition, including substance abuse;
- comply with restrictions on personal associations, place of residence, place of employment, or travel;
- surrender driver's license or passport;
- comply with a specified curfew;
- continue to seek employment;
- continue or begin an educational program;
- remain in the custody of a responsible member of the community who agrees to monitor the defendant and report any violation of any release condition to the court;
- not possess a firearm or other dangerous weapon;
- not enter specified premises or areas and not assault, beat, molest, or wound a named person or persons;
- satisfy an injunctive order made a condition of release; or
- comply with any other condition, including the requirement of money bail as described in MCR 6.106(E), reasonably necessary to ensure the defendant's appearance as required and the safety of the public.

If the court orders a bond with conditions that are determined to be reasonably necessary for the protection of any person, the Order for Pretrial Release/Custody (SCAO Approved Form MC 240) must be sent to the local law enforcement authority for entry into the LEIN system. [MCL 765.6b]

c. Bail

If the court determines for reasons it states on the record that the defendant's appearance or the protection of the public cannot otherwise be assured, money bail, with or without conditions described in MCR 6.106(D), may be required as follows:

- 1) The court may require the defendant to post a bond that, *at the defendant's option*, is executed by:
 - a) a surety approved by the court
 - b) the defendant, or
 - c) another who is not a licensed surety, and secured by either
 - a cash deposit, or its equivalent, for the full bond amount, or
 - a cash deposit of 10 percent of the bond amount, or,
 - with the court's consent, designated real property.
- 2) The court may require the defendant to post a bond that, *at the defendant's option*, is executed by:
 - a) a surety approved by the court, or
 - b) the defendant, or by another who is not a licensed surety, and secured by
 - a cash deposit, or its equivalent, for the full bond amount, or,
 - with the court's consent, designated real property.

In addition, the court may require satisfactory proof of value and interest in property if the court consents to the posting of a bond secured by designated real property.

[MCR 6.109(E), emphasis added; see also MCL 780.67]

6. Bond Form

The SCAO Approved Form MC 241 "Bond" should be completed in conjunction with the release order, SCAO Approved Form MC 240 "Order for Pretrial Release/Custody". (See the Section 4 Appendix for copies of the forms.)

C. Bail Deposit

The person for whom bail has been set shall execute the bail bond and deposit with the clerk of the court before which the proceeding is pending a sum of money equal to 10% of the bail but at least \$10.00. A defendant who personally makes the deposit shall be notified the upon the defendant's conviction the defendant's deposit may be used to collect a fine, costs, restitution, assessment, or other payment as provided in MCL 780.68. [MCL 780.66] **Note** the conflict between statute and court rule described above and on the preceding page.

No attorney-at-law practicing in this state and no official authorized to admit another to bail or to accept bail shall furnish any part of any security for bail in any criminal action or any proceeding nor shall any such person act as surety for an accused admitted to bail. [MCL 780.72]

D. Alternative Bond Documents

Courts may require or receive alternative documents in lieu of a cash, percent, or surety bond. Receipt of such documents must be documented in the case file. If the court determines that the document should be kept in a location for safe keeping other than the court file, the location of the document should be noted on the Register of Action. If the case is transferred to another court, such as a bind-over to circuit court or a change of venue, the document should be included in the itemization of materials transferred.

1. Drive License

Law enforcement or the court may require a person to surrender their driver license as security for the defendant's appearance in court. Upon conclusion of the trial or imposition of sentence, as applicable, the court shall return the license to the defendant unless other disposition of the license is authorized by law. [MCL 780.64, 257.729, MCR 6.106(D)(2)(f)]

2. Guaranteed Appearance Certificate

In lieu of a driver license a person may leave a guaranteed appearance certificate with the law enforcement officer or the court. The certificate must contain a printed statement that a surety company authorized to do business in Michigan guarantees the appearance of the person whose signature appears on the card or certificate, and that if the defendant fails to appear in court the company will pay any fine, costs, or bond forfeiture imposed on the person not to exceed \$200.00. Upon conclusion of the trial or imposition of sentence, as applicable, the court shall return the certificate to the defendant. [MCL 257.749]

3. Passport

As a condition of bond the court may require surrender of a passport. A person without a passport might surrender a Refugee Travel Document, which can serve in lieu of a national passport. It may be useful to acquire signature of the owner of the passport or travel document upon return as receipt. Expired passports or travel documents and notification of conviction should be sent to US Immigration, Investigations Bureau, 333 Mt. Elliott Street, Detroit, MI 48207-4381. For further information, contact US immigration, 313-568-6036. [MCR 6.106(D)(2)(f)]

E. Crime Victim's Rights

The victim of a crime will be given notice that they may contact the sheriff to determine whether a defendant has been released from custody pending trial.

[MCL 780.755, MCL 780.815]

If the victim wishes not to have contact with the defendant, the arraigning judge can order a "no-contact" clause in the defendant's bond as a condition of pretrial release. If contact was made by the defendant, the prosecuting attorney may file a petition for bond revocation. A no-contact order as condition of release might contain language ordering the defendant to: 1) refrain from making any contact with the victim in person, by mail, by telephone, or through a third party; or 2) leave the home if the parties are still living together. If the defendant cannot leave the residence for some reason, the bond should contain a warning that any future charges or noncompliance with the conditions of bond could jeopardize his or her liberty. [MCR 6.106(D)(2)(e)]

4.2.4 Appeals and Modifications

A. Appeals

A party may move for review of a release decision in the court with appellate jurisdiction. There is no filing fee for the motion. The reviewing court may not stay, vacate, modify, or reverse the release decision except on finding an abuse of discretion. [MCR 6.106(H)(1)]

After conviction, the court may order that the original bail stand as bail pending appeal or increase or reduce bail. [MCL 780.66(4)]

B. Modifications

A release decision may be modified or a custody hearing reopened under MCR 6.106(H)(2). The party seeking modification has the burden of going forward. [See also MCR 780.65]

1. Prior to Arraignment on Information

Prior to arraignment on the information, any court before which proceedings against the defendant are pending may, on the motion of a party or its own initiative and on finding that there is a substantial reason for doing so, modify a prior release decision or reopen a prior custody hearing.

2. At Arraignment on Information and Afterwards

At the defendant's arraignment on the information and afterwards, the court having jurisdiction of the defendant may, on the motion of a party or its own initiative, make a de novo determination and modify a prior release decision or reopen a prior custody hearing.

3. Emergency Release

If a defendant being held in pretrial custody under MCR 6.106(H) is ordered released from custody as a result of a court order or law requiring the release of prisoners to relieve jail conditions, the court ordering the defendant's release may, if appropriate, impose conditions of release in accordance with MCR 6.106 to ensure the appearance of the defendant as required and to protect the public. If such conditions of release are imposed, the court must inform the defendant of the conditions on the record or by furnishing to the defendant or the defendant's lawyer a copy of the release or setting forth the conditions and require the defendant to sign a bond form (MC 241). [MCR 6.106(H)(3)]

4. Order

If the release order is modified, complete form MC 240, Order Regarding Pretrial Release and check the box “amended” and have the defendant sign a new bond form MC 241 with the new conditions. If the release order contains provisions requiring LEIN entry pursuant to MCL 765.6b and any of the conditions are modified, check the box “amended conditions” on the two LEIN copies so that the local law enforcement authority responsible for entering the order onto LEIN is informed of the changes. The form also contains a check box option to indicate an amended expiration date **if the expiration date is changed at the same time the modified conditions are made**. Do not use this form if only the expiration date is changed; use MC 240a (see item 2. below).

5. Extension of Expiration Date

In the event the court must extend **only** the expiration date of a bond containing conditions which necessitate LEIN entry pursuant to MCL 765.6b, use form MC 240a, Order Extending Bond for Protection of Named Person(s). It is not necessary to complete a new bond form (MC 241).

4.2.5 Termination of Pretrial Release Order

A. Conditions Met

1. Court Rule Provisions

If the conditions of the pretrial release order are met and the defendant is discharged from all obligations in the case, the court must vacate the release order, discharge anyone who has posted bond. If the bond was posted by the defendant, and a cash bond or 10% bond was posted, the money must be first applied to the amount of any fine, costs, or statutory assessments imposed and any balance returned. If the bond was posted by a third party, and there has been a deposit of 10% of the bond amount, return 90% of the deposited money and retain 10%. If the bond posted by a third party was a cash bond, return 100% of the deposited money. [MCR 6.106(I)(1), (3)]

2. Statutory Provisions

When the conditions of the bail bond have been performed and the accused has been discharged from all obligations in the cause, the court shall order the fine, costs, restitution, assessment, or other payment collected out of the cash deposit. If the bond was a 10% bond, the court shall return to the accused 90% of the sum and retain costs of 10% of the amount deposited, except that if the accused has not been convicted of the charge, the entire sum deposited shall be returned to the accused. [MCL 765.15(2), 780.66(6), (8), and 780.67(6)]

Rules of practice set forth in any statute, if not in conflict with Michigan Court Rules, are effective until superseded by rules adopted by the Supreme Court. [MCR 1.104]

B. Conditions Not Met

1. Court Rule Provisions

If the defendant has failed to comply with the conditions of release, the court may issue a warrant for the arrest of the defendant and enter an order revoking the release order and declaring the bail money deposited or the surety bond, if any, forfeited.

- a. The court must mail notice of any revocation order immediately to the defendant at the defendant's last known address and, if forfeiture of bond has been ordered, to anyone who posted bond.

- b. If the defendant does not appear and surrender to the court within 28 days after the revocation date or does not within the period satisfy the court that there was compliance with the conditions of release or that compliance was impossible through no fault of the defendant, the court may continue the revocation order and enter judgment for the state or local unit of government against the defendant and anyone who posted bond for the entire amount of the bond and costs of the court proceedings.

If the bond posted was a surety bond for 1/4 the full bail amount pursuant to MCL 765.6(2), the judgment against the surety shall be for the amount of the surety bond and the defendant shall be liable to the court for the difference, pursuant to MCL 765.28.

- c. The 10 percent bond deposit made under MCR 6.106(E)(1)(a)(ii)[B] must be applied to the costs and, if any remains, to the balance of the judgment. The amount applied to the judgment must be transferred to the county treasury for a circuit court case, to the treasuries of the governments contributing to the district control unit for a district court case, or to the treasury of the appropriate municipal government for a municipal court case. The balance of the judgment may be enforced and collected as a judgment entered in a civil case.

[MCR 6.106(I)(2); see also MCL 780.63]

(See Appendix in this Section for information on surety bond process)

2. Statutory Provisions

If the accused does not comply with the conditions of the bail bond, the court having jurisdiction shall enter an order declaring the bail to be forfeited. Notice of the order of forfeiture shall be mailed promptly by the court to the accused at his or her last known address. If the accused does not appear and surrender to the court having jurisdiction within 30 days from the date of the forfeiture, or within that period satisfy the court that appearance and surrender by the accused is impossible and without his fault, the court shall enter judgment for the state or local unit of government against the accused for the amount of the bail and costs of the court proceedings.

The deposit made in accordance with MCL 780.66(1) shall be applied to the payment of costs. If any amount of the deposit remains after the payment of costs, it shall be applied to payment of the judgment and transferred to the treasury of the unit of government in which the court is located. The balance of the judgment may be enforced and collected in the same manner as a judgment entered in a civil action.

[MCL 780.66(7)]

C. Disbursement of Money Bail

Once a person has met all obligations to the court, the bond is disbursed. “All obligations” does not include compliance with sentence. When the bond has been posted by the defendant and the defendant was found guilty MCR 6.106(I)(3) states: “...the money must be *first* applied to the amount of any fine, costs, or statutory assessments imposed and any balance returned, subject to subrule (I)(1).” [Emphasis added] If the bond was posted by a third party or a surety, the Michigan Supreme Court ruled in People v Brow, 253 Mich 140, against the continuance of a bond past sentencing without the consent of the sureties.

If the court ordered a defendant who has made a cash deposit in accordance with MCL 780.66(1) to pay a fine, costs, restitution, assessment, or other payment, the court shall order the fine, costs, restitution, assessment, or other payment collected out of the case deposit. If a person is subject to any combination of fines, costs, restitution, assessments, or payments arising out of the same criminal proceeding, money collected from that person for the payment of fines, costs, restitution, assessments, or other payments shall be allocated as provided in MCL 775.22. [MCL 780.66(8)]

(See Appendix in this Section for chart on Bond Disbursement Procedure)

4.3 Forms

[MC 240 - Order Regarding Pretrial Release/Custody](#)

[MC 240a - Order Extending Bond for Protection of Named Person\(s\)](#)

[MC 241 - Bond](#)

[MC 218 - Order Revoking Release and Forfeiting Bond, Notice of Intent to Enter Judgment](#)

[MC 238 - Judgment After Bond Forfeiture](#)

[MC 239 - Removal of Entry from LEIN](#)

APPENDIX 4

Bond Disbursement Procedure

Surety Bond Process

(rev. 3/00)

BOND DISBURSEMENT PROCEDURE

ACTIVITY	CASH BOND		PERCENT BOND	
	Posted by Defendant	Posted by Third Party	Posted by Defendant	Posted by Third Party
Failure to Appear	Send Bond Forfeiture Notice. Issue Bench Warrant. After 28-30 days, forfeit bond. MCR 6.106(I)(2) MCL 780.67(8)	Send Bond Forfeiture Notice. Issue Bench Warrant. After 28-30 days, forfeit bond. MCR 6.106(I)(2) MCL 780.67(8)	Send bond Forfeiture Notice. Issue Bench Warrant. After 28-30 days, forfeit bond; 10% to bond cost, 90% to bond forfeiture. MCR 6.106(I)(2) MCL 780.66(7)	Send Bond Forfeiture Notice. Issue Bench Warrant. After 28-30 days, forfeit bond; 10% to bond cost, 90% to bond forfeiture. MCR 6.106(I)(2)
Found Not Guilty or Case Dismissed	Return bond in full. MCL 780.67(6)	Return bond in full . MCL 780.67(6)	Keep 10% [MCR 6.106(I)(1)] Return bond in full [MCL 780.66(6)] ¹	Keep 10% [MCR 6.106(I)(1)] Return bond in full [MCL 780.66(6)] ²
Found Guilty	After sentencing apply to fine & cost. Return balance. MCR 6.106(I)(3) MCL 765.15(2) MCL. 780.67(7)	After sentencing, return to poster unless permission given to apply to fine & cost. MCL 780.67(6)	Ater sentencing, apply 10% to bond cost, 90% to fine & cost. Return balance. MCR 6.106(I)(2)(c) MCL 780.66(8)	After sentencing, apply 10% to bond cost, return balance to poster unless permission given to apply to fine & cost. MCL 780.66(8)

² Conflict exists between statute and court rule. SCAO Bond Form MC 241 complies with the interpretation that when statute and court conflict on procedural matters, the court rule take precedence.

BOND DISBURSEMENT**Page 2**

ACTIVITY	CASH BOND		PERCENT BOND	
	Posted by Defendant	Posted by Third Party	Posted by Defendant	Posted by Third Party
Fail to Pay Balance of Fine & Cost	Issue Bench Warrant, set bond on warrant equal to no more than double the fine assessed. MCL 780.63-64	Issue Bench Warrant, set bond on warrant equal to no more than double the fine assessed. MCL 780.63-64	Issue Bench Warrant, set bond on warrant equal to no more than double the fine assessed. MCL 780.63-64	Issue Bench Warrant, set bond on warrant equal to no more than double the fine assessed. MCL 780.63-64
Fail to appear after arrest on warrant when bond posted	Send Bond Forfeiture Notice, Issue Bench Warrant. After 28-30 days, forfeit bond, applying to fine & cost. MCR 6.106(I)(2) MCL 765.15(1) MCL 780.67(8)	Send Bond Forfeiture Notice, Issue Bench Warrant. After 28-30 days, forfeit bond. MCR 6.106(I)(2) MCL 780.67(8)	Send Bond Forfeiture Notice, Issue Bench Warrant. After 28-30 days, forfeit bond, MCL 780.66(7), MCL 765.15(1). 10% to bond cost, 90% to fine & cost. MCR 6.106(I)(2)	Send Bond Forfeiture Notice, Issue Bench Warrant. After 28-30 days, forfeit bond, MCL 780.66(7). 10% to bond cost, 90% to bond forfeiture. MCR 6.106(I)(2)

MCR 6.106 (Pre-Trial Release)
MCL 765.15 (Code of Criminal Procedure)
MCL 780.66-67 (Traffic and Misdemeanor Procedure)



Michigan Supreme Court

State Court Administrative Office
Michigan Hall of Justice
P.O. Box 30048
Lansing, Michigan 48909
Phone (517) 373-0130

Carl L. Gromek, Chief of Staff
State Court Administrator

Memorandum

DATE: January 12, 2005

TO: All Judges
cc: Court Administrators, Magistrates, Court Clerks

FROM: Carl L. Gromek

RE: State Court Administrative Memorandum 2005 - 01
Amendment to Surety Bond Process
(amends Administrative Memorandum 2004-03)

The process of issuing, releasing, or forfeiting surety bonds is governed by various court rules and statutes. This memo is provided in order to outline the elements of the process to assist courts with administrative procedures. Changes have occurred since ADM 2004-03 was released. Please adjust your procedures accordingly.

A. **Pre-trial Release**

1. ***Procedure:***

- a. Court states reasons on the record that the defendant's appearance or protection of the public cannot be assured with a personal recognizance bond or by money bail with or without conditions.
- b. If the court finds conditions outlined in MCL 765.6 or 765.6a cannot be met by defendant, 10% bond shall not be set.
- c. If the court fixes a bail amount under MCL 765.6(1) and allows for the posting of a 10% deposit bond, the person accused may post bail by a surety bond in an amount equal to 1/4 of the full bail amount fixed under MCL 765.6(1) and executed by a surety approved by the court.
- d. Defendant and surety sign SCAO approved form MC-241, Bond.

2. ***Note(s):***

- a. MCR 6.106(E)(1)(a) provides that the court may require a defendant to post a bond executed by a surety approved by the court, by the defendant, or by another who is not a licensed surety.
- b. MCL 765.6a provides that before granting bail, a court shall require a cash bond or surety other than the applicant if the applicant is either charged with a crime alleged to have occurred while on bail pursuant to a bond personally executed by him or her; or has been convicted of a felony twice within the preceding five years.

B. Conditions of Bond

1. ***Procedure:***

- a. Notate all conditions of release on the bond prior to defendant, third party, or surety's signature on MC-241, Bond form.
- b. If conditional bond is entered for the protection of named persons, the court forwards a copy of MC-241, Bond, to law enforcement for entry into LEIN.

2. ***Notes:***

- a. MCR 6.106(D) provides that if the court determines that the release of a defendant on personal recognizance bond will not reasonably ensure the appearance of the defendant or will not reasonably ensure the safety of the public, the court may order conditional bond.
- b. Kondzer v Wayne County Sheriff, 219 Mich App 632 (1996), held that a surety is only bound by those terms and conditions to which they agree or consent for the release of a defendant. A violation of conditional bond may result in forfeiture or revocation of a surety bond; however this may only be imposed on a surety if they agreed or consented to the imposition of the protective condition. **If a court intends to require a surety to be bound by all conditions of the bond, then the sheriff's department should be instructed not to accept a bond or power of attorney that specifically limits the surety's terms to appearance only. If a surety signs MC-241, then they are bound by the terms listed on the bond.**
- c. People v Brow, 253 Mich 140 (1931), held that a surety's obligation to guarantee a defendant's presence in court terminates upon sentencing unless the surety consents to the bond being continued.

C. Termination of Release Order and Notice to Surety

1. *Procedure:*

- a. Upon finding that a defendant has failed to comply with conditions of release, the court may issue a warrant, SCAO approved form MC-229, Petition and Bench Warrant.
- b. Upon issuing the bench warrant, prepare SCAO form MC-218, Order Revoking Release and Forfeiting Bond, Notice of Intent to Enter Judgment, sign and mail it to the defendant, the surety agent, anyone who posted bond, and the prosecutor.
- c. The court prepares and files SCAO form MC-230, Motion and Order to Show Cause. The court shall give each surety immediate notice, not to exceed seven days after the date of the failure to appear.

2. *Notes:*

- a. MCL 600.8511 does not confer the authority to sign an Order Revoking Release and Forfeiting Bond to a district court magistrate.
- b. MCR 6.106 (I)(2) provides that a defendant's failure to comply with conditional release may result in revocation of the release order and forfeiture of bond.
- c. There is a conflict regarding the procedural requirements for service of the Motion and Order to Show Cause upon a surety. MCR 3.604(I)(2) provides that the notice may be mailed to the address stated in the bond or when the security was furnished, unless there has been a notice of change of address, or in any manner prescribed in MCR 2.107. MCL 765.28 provides that notice shall be served upon each surety in person or left at the surety's last known business address. When there is a conflict between statute and court rule and the conflict is procedural in nature, court rule governs. Therefore, the procedure for service upon sureties may be found in MCR 3.604(I)(2).

D. Opportunity to Appear, Entry of Judgment

1. *Procedure:*

- a. Hold show cause hearing. If good cause is shown, judgment against the surety or sureties may be entered for such amounts the court may see fit, not exceeding the full amount of the bond.

- b. If a surety has posted a bond in an amount equal to $\frac{1}{4}$ of the full bail amount fixed under MCL 765.6(1), the surety is only liable for that amount. The defendant is liable for the remainder of the bail set by the court.
- c. Prepare, sign, and mail SCAO form MC-238, Judgment after Bond Forfeiture to defendant and surety agent.
- d. If bond or bail is forfeited, the court shall enter an order directing the disposition of the cash, check or security within 45 days of the order. The treasurer or clerk, upon receipt of a certified copy of the order, shall dispose of the cash, check, or security pursuant to the order.
- e. Prosecuting Attorney, attorney general, or an attorney for the local municipality may proceed with civil collection procedures.

2. Notes:

- a. MCL 600.8511 does not confer the authority for a district court magistrate to hold a show cause hearing on a forfeiture procedure.
- b. MCR 3.604 provides that in an action where a bond or other security has been posted, judgment may be entered directly against the surety or security on motion without the need of an independent action showing liability on the bond or forfeiture of the security.
- c. MCR 6.106(I)(2) provides that if the defendant does not appear and surrender to the court within 28 days after revocation date or does not, within that period, satisfy the court that compliance to bond conditions has occurred, the court may continue the revocation order and enter judgment for the state or local unit of government against the defendant and anyone who posted bond for the entire amount of the bond and costs of the court proceedings.
- d. MCL 765.15(1) provides the procedure for disposition of bond or bail upon forfeiture.
- e. MCL 765.28 provides that up to the full amount of the bond may be forfeited and a judgment entered by the court.
- f. MCR 6.106(I)(2) provides that if a prosecuting attorney, attorney general or an attorney for the local municipality does not wish to be

involved with any forfeiture action, the court still may schedule a show cause hearing, send notice to the prosecuting official, and proceed.

E. Remission of Penalty

1. *Procedure:*

- a. Defendant or attorney files Motion for Reinstatement of Bond.
- b. Hearing scheduled with proper notice to prosecutor or an attorney for the local municipality.
- c. Motion may not be granted without payment of the costs and expenses incurred in the proceedings for the collection of the penalty.
- d. If the person who forfeited bond or bail is apprehended, the ends of justice have not been thwarted, and the county has been repaid its costs for apprehending the person within one year from the time of the forfeiture judgment, the court shall set aside the forfeiture and discharge.
- e. If bond or bail is discharged, the court must enter an order with a statement of the amount to be returned to the depositor.

2. *Notes:*

- a. MCR 3.604(I)(3) provides that if the court determines, in later proceedings or upon appeal, that the surety is not liable or the security should not have been forfeited, restitution of the money paid or security forfeited may be ordered to be paid back to the surety agent or person who posted bond.
- b. MCR 3.605(D) provides that, with proper notice to the prosecutor or an attorney for the local municipality, an application for the remission of a penalty, including a bond forfeiture, may be made to the judge who imposed the penalty or ordered the forfeiture.
- c. MCL 600.4835 provides that, upon good cause shown, the circuit court may remit any penalty, or any part thereof, upon such terms as appear just and equitable to the court to the county treasurer (MCL 600.4841). The statute does not authorize the court to remit any fine imposed by any court upon conviction for any criminal offense, nor any fine for actual contempt of court, or for failure to comply with the court's orders or process.

- d. MCL 765.15 provides the procedure to be followed if bond or bail is forfeited, the defendant is apprehended within one year from the time of the forfeiture judgment, and the forfeiture order is set aside.

F. Deposit of Forfeited Bond

1. *Procedure:*

- a. If bond or bail is forfeited, an order must enter directing disposition of it within 45 days of the order. Upon presentation of a certified copy of the order to the treasurer or clerk, the bond or bail must be disposed of pursuant to the terms of said order.
- b. If the court does not order an assignment of the bond, it must order the breach prosecuted by the attorney general or the prosecuting attorney for the county in which the bond was taken under MCR 3.604. The penalty recovered is to be paid into the treasury of the county in which the bond was taken, to the credit of the general fund.

2. *Notes:*

- a. MCR 3.606 provides that the penalty of the bond for contempt outside the immediate presence of the court shall be credited to the general fund of the treasury of the county in which the bond was taken.
- b. MCL 765.15(1) provides for the procedure to follow after a bond or bail is forfeited.
- c. MCL 780.905(4) provides that any assessments imposed upon a defendant where the bond or bail has been forfeited, shall be collected from any cash deposit personally given by defendant.